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## THE ADAPTATION OF A CONSTITUTION TO THE NEEDS OF A PEOPLE <sup>1</sup>

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THE end of the eighteenth century was marked by the formulation and almost universal acceptance by the educated classes of the European world of general political principles. These were regarded as of almost universal application at all times and under all conditions. Among them may be mentioned the sovereignty of the people, the separation or distribution of the powers of government, and the existence of natural rights which were inherent in man.

It was believed at that time that no good government could be established except on these principles. It was of course admitted that in some countries conditions were such that these principles could be applied with greater immediate advantage than was possible in the case of others. But it was on the whole considered to be true that in all countries the application of these principles should be made because of the educational effect upon the people, who would learn much even from the failures and mistakes which they might make.

Perhaps in no country of the western world was there at the end of the eighteenth century greater confidence held in the universal application of general political principles than in the United States. It is almost certain that there is no other country in which this general idea has been retained with so little modification.

The reasons for this attitude in the United States are not far to seek. The revolution which broke out in this country and the changes in the form of government made necessary by its successful conclusion forced upon the people of the United States the formulation of principles upon which the new polit-

<sup>1</sup>Address at the dinner meeting of the Academy of Political Science, November 19, 1914.

ical organization might be based. Further, the comparatively simple character of the social conditions which obtained in the North America of that day made the application of the principles accepted an easy matter. Little government of any sort was necessary. The free play of an almost unadulterated individualism, a corollary of the principle of natural rights, might be relied on to accomplish what was then regarded as the one supremely desirable thing, that is, the material conquest of the American continent.

In the more settled and more complex conditions existing in Europe, however, the principles which had been received with such enthusiasm on this side of the water came soon not to be regarded by the thinking world with the same favor. Apart from France, governmental changes were not so sudden as they were here, and the increasingly industrial character of European society soon seemed to cause evils which could be remedied only by a limitation of the conception of natural rights.

We find in Europe quite early in the nineteenth century that most of the principles which had been by many supposed to be of universal application were questioned. Popular sovereignty lost much of its hold upon the European mind as a result of the happenings of the French Revolution and the subsequent conservative reaction. The idea of natural rights was in large measure replaced by the conception of rights based on the law of the land as fixed by a representative legislature. The principle of the separation of powers was greatly weakened in its application to concrete political facts, or else its general applicability to government was denied.

The announcement in the world of natural science of the principle of evolutionary progress through adaptation to changes in environment, and its general acceptance by scientific men could not fail to have their influence on the speculations of political thinkers. Gradually there grew up the so-called historical schools of thought as opposed to what had been philosophical and speculative schools.

The result has been that in a little over a century a remarkable change in the mental attitude of political writers has taken place. Whether of European or of American nationality, there is

much less dogmatism on their part than was formerly the case. At the same time it cannot be denied that the old ideas with regard to universally applicable political principles are still maintained by many in this country whose intellectual training has been influenced by the political philosophy of the latter part of the eighteenth and the early part of the nineteenth century. Perhaps nowhere is the force of these ideas greater than among the judges of our courts, who have had great influence on political development in this country through their power to declare unconstitutional acts of our legislatures. In many instances it is, however, to be remembered that the decisions of our courts on constitutional questions do not necessarily reflect the personal opinions of the judges, since they must follow constitutional provisions adopted under the influence of the older ideas and as yet unaffected by the political theories of the present day.

But, for whatever reason, it is nevertheless true that in the United States probably more than elsewhere there still lingers the belief in political principles of universal application, regardless of the economic and social conditions obtaining in particular countries and of the history and peculiar traditions of those countries.

The existence of these ideas and their disastrous effects upon constructive political work have been brought most forcibly to my attention during the past year as a result of the experience which it has been my good fortune to have in connection with the attempts made in China to frame a constitution for its new republican government. Perhaps a short statement of what has happened there will be of value in throwing light on the subject which has been assigned to me this evening, *viz.*, the adaptation of a constitution to the needs of a people.

For reasons into which it is unnecessary to enter, a revolution broke out in China in 1911. This soon took the form of an attempt to expel the alien Manchu dynasty which had controlled the country for nearly three centuries. China is from the point of view of climate, of geography and of race divided into two great sections, *viz.*, the north and the south. The Manchus, who came from the north, had always, and naturally, a greater hold on the north than on the south. The revolution was im-

mediately successful in the south, and province after province threw off the yoke of the Manchu. In the north, however, the Manchus at first held their own.

The representatives of the southern provinces, which, it may be said, had been much more subjected than was the case in the north to western influences, assembled at Nanking, the first capital of the last Chinese dynasty, the Mings, for the purpose of providing a form of government to take the place of that which had been overthrown. The revolution had been successfully carried through mainly by what are spoken of in China as the returned students, that is, Chinese young men educated abroad. Many of these students had been educated in the republics of the United States and France, though probably the great majority had never been further from China than Japan. The fact that Japan does not have a republican form of government did not, however, have the effect of causing the Japanese returned student to look upon a republic with suspicion. Japan had been for a long time an asylum for political refugees from China, and the Chinese students in Japan were subjected to radical rather than conservative influences exerted outside of the university. Inside the university the influences were theoretical rather than practical by reason of the fact that students studied and learned from books and did not do much practical work in the nature of observation and experiment. When we add to these conditions the fact that with the overthrow of the Manchus there was no serious pretender to the throne, we find that the formation of a republic, that is, a form of government in which the executive is chosen by a more or less representative body for a fixed term, was almost inevitable. There was therefore formed at Nanking the first Chinese republic with Dr. Sun as President. This government had, however, jurisdiction over only the southern provinces.

A union with the north was desirable in order to prevent the partition of the country by foreign powers and to secure by recognition from those powers the perpetuation of what had been accomplished. This union was secured. It had three important results: first, the Manchus formerly abdicated; second, the form of government remained republican; third, Yuan-

Shih-Kai was elected Provisional President in place of Dr. Sun, who resigned.

This arrangement was a compromise, and like most compromises it left many important things unsettled. It was not only a compromise, but it was as well frankly recognized as provisional and temporary.

The most important feature of the compromise thus made was to be found in the fact that by the election of Yuan Shih Kai as Provisional President a conservative counterpoise was opposed to the radicalism of Young China. For Yuan Shih Kai was one of the ablest of the men who had been associated with the last days of the Manchu dynasty. I have spoken of him as conservative. He was really conservative only comparatively speaking. He had always been regarded before the revolution as one of the most progressive of the higher Chinese officials. During the time that he was viceroy at Tientsin he had encouraged education along western lines. He had been more than any other one man responsible for the building up of a modern army. But the pace of reform had become faster than he liked and he was on that account regarded by Young China as conservative if not reactionary. But, whether Yuan Shih Kai be regarded as progressive or not, his entrance into the new republican government marked the accession to the ranks of those in control of the new movement of an element other than the radical and theoretical western-educated Young China.

It is believed, however, that this more conservative and practical element had little influence on the provisional constitution which was then adopted. This constitution was apparently framed with little regard to Chinese conditions. It was based on the theory that a constitution itself would exercise a controlling influence on political action regardless of the conditions and traditions of the people to which it applied. It was thus so framed as to lay greater emphasis on the legislature, to which the Chinese people were quite unaccustomed, than on the executive, with which they were all familiar. This is seen from the provisions requiring legislative approval of the most important appointments and making it necessary that the President's cabinet should have the confidence of the legislature. When the

provisional constitution first went into effect the only legislative body provided was a single-chambered council. The constitution provided for the organization of a legislature by act of this council. The council acting under this provision organized a two-chambered legislature which was to inherit all the powers possessed by the council.

The necessity which the President was under of obtaining the consent of both of the two houses of the new two-chambered legislature for his important appointments was one of the causes of the failure of the provisional constitution. Another was the attempt to introduce cabinet as opposed to presidential government. But the main reason why this first attempt at a constitutional republic failed is to be found in the bitter party strife which immediately broke out between Young China and Old China. This strife was accentuated because of the fact that Young China was for the most part from the south while Old China was from the north. It finally developed into an open rebellion on the part of a number of southern provinces in the summer of 1913. The rebellion was put down comparatively easily by the President, who had control of the army, and who had by the negotiation of the quintuple loan in April of that year secured larger financial resources than were possessed by the southern Young China party.

Soon after the rebellion was put down the legislature proceeded, as provided in the provisional constitution, to draw up a permanent constitution. Young China still resolutely shut its eyes to the actual facts of Chinese life and persisted in the mistake made at Nanking, namely, of exalting the legislature over the executive. Believing the form of cabinet government as seen in the political systems of Great Britain and France to be the most highly developed kind of constitutional government, and distrusting if not disliking the President, they felt that China should have a cabinet government, under which the President would occupy a comparatively unimportant position. Before their actual experience with this form of government under the provisional constitution those in the immediate entourage of the President also were inclined to favor cabinet government. But after the experiences of the spring and summer of 1913 they

had somewhat modified their opinion. I personally had advised against cabinet government from the time I arrived in Peking, but my advice received little attention, barely a hearing. In the fall of 1913, however, I found more attentive listeners.

I do not mean to attribute this change in opinion to any influence I may have exerted. The President, who had been told that cabinet government was a good thing, did not at first know what it meant. He had, however, in the meantime found out, and he had discovered that it meant that the control of affairs was under it centered in the Parliament, which was a hotbed of partisan strife, and that the President counted for little.

It was considered necessary to obtain from the foreign powers recognition of the republic, which before October 1913 had been accorded by only one of the great powers, *viz.*, the United States. Consequently that portion of the constitution which provided for the election of the Permanent President and Vice-President was reported by the committee to the Parliament, which immediately adopted it and at once elected the Provisional President and Vice-President, Yuan Shih Kai and Li Yuan Hung as Permanent President and Vice-President respectively, —that is, for a term of five years.

Soon after this election it was discovered that the Kuomintang, the national party which had been opposing the party in the Parliament supporting the President, had in correspondence and otherwise been, during the preceding summer, engaging in treasonable conspiracy in support of the rebellion just put down. The President accordingly declared the Kuomintang to be a treasonable conspiracy and deprived all representatives of that organization in Parliament of their certificates of election. Without these they could not participate in the work of the Parliament. The certificates of election were taken away from so many members that those remaining did not under the law, as it was interpreted, constitute a quorum. The Parliament did not formally meet again and finally dissolved.

The Parliament which thus dissolved was, as has been said, a bicameral body. It was modeled very largely on the Congress of the United States. There was first a Senate elected by the assemblies of the various provinces. There was in the second

place a House of Representatives, the members of which were elected in the districts by electors chosen by the voters. No one could vote for such an elector who did not have the required educational qualification or did not possess a certain amount of property. But the voters under the limited franchise provided were so many in number, there was so little knowledge among the Chinese with regard to elections and election processes, and so little power of political coöperation, that in most instances the elections were rather farcical proceedings and absolutely under the control of a few active politicians. The Parliament which resulted from these elections may not be said to have been representative of any of the important interests in the country with perhaps the exception of the returned students. Its most important piece of legislation was a law fixing the salaries of the members, which were put at a rather high figure. When it dissolved most people in China who had an intelligent interest in the future of the country breathed a sigh of relief, and no serious or effective protest came from any quarter against the rather arbitrary action of the President in dissolving the Kuo-mingtang with the consequent disappearance of the Parliament. The Parliament representing nothing of importance during its life, no one mourned its death.

To this distinctly non-representative parliament was given by the original provisional constitution the central position in the government. Such an arrangement was foreign to the habits of the Chinese, who for centuries had been accustomed to the concentration of the power in the Emperor—the Son of Heaven—power to be exercised, however, in accordance with the dictates of immemorial custom. Furthermore, the Chinese had no legislative traditions, and had had no practical experience in conducting the work of deliberative bodies. The natural result was that the work of Parliament was not effective. Finally, the concentration of most important functions of government in its hands imposed such a burden upon it that with its ineffectiveness it could not do the work.

We have therefore a non-representative body, from the Chinese point of view strange and unfamiliar, and at the same time an ineffective body, entrusted with the most important public

functions at probably the most critical time in the recent history of the country. Naturally, little if any progress was made by it in solving the many pressing and important problems which were presented.

Just prior to the dissolution of the Kuomintang party, the committee of the Parliament had drafted a complete constitution which was to be submitted to the Parliament for action. This draft constitution provided, as has been said, for the cabinet form of government and emphasized the legislature rather than the executive, as had been the case with the provisional constitution. The disappearance of Parliament made it impossible for this constitution to be acted upon.

Soon after the disappearance of Parliament the President summoned an administrative council composed for the most part of representatives of the more conservative elements of Chinese society. This body passed such legislation as seemed to be required, and among other things provided for a convention which was authorized to make amendments to the provisional constitution.

After sitting for some months this convention adopted amendments to the provisional constitution which greatly strengthened the power of the President. Among other things it provided for a council of state to be composed of members appointed by the President. This body was to advise the President and was to act as a legislature until the organization of a new legislature to be elected by the people. The amended provisional constitution provided that the convention which amended it should organize such a legislature and that the council of state should draft a new permanent constitution to take the place of the provisional constitution as amended.

Up to the present time all legislation has been passed by the council of state. In addition to legislation proper, that is, laws passed by the council of state acting temporarily as a legislature, ordinances of the President, who has a wide power of ordinance by the provisions of the present constitution in force, regulate a number of very important matters such as the civil and military organization of the government.

The experience of the few months of cabinet government was

borne in mind by those called upon to amend the provisional constitution, and will undoubtedly have a great influence upon the permanent constitution which will be adopted in the course of the next two or three years. It has already caused a very great increase in the powers of the President, who in the minds of the people takes the place—so far as an elected officer serving for a limited time could take that place—of the former Son of Heaven. He it is in whom are now centered all powers of government. The function of the legislature by this amended constitution is to be advisory rather than controlling, consultative rather than initiating.

Such a reversal of policy is of course somewhat disconcerting to the ardent republican who regards a republic as a government of the people, by the people and for the people. But it cannot be denied that the form of government provided by the amended provisional constitution is more in accord with the history and conditions of the country than was the original provisional constitution. For China has never really known any sort of government but personal government in accordance with immemorial custom. The Chinese people for reasons into which we cannot now enter are at present incapable of any large measure of social coöperation. Well-organized economic classes conscious of common interests do not exist in the same degree as they were to be found in Europe when representative government began to be established.

The consequence is that the organization of a representative body which will really represent anything is extremely difficult, while the development of autocracy is very easy. Under these conditions all in the nature of political reform which can be accomplished at present is to place by the side of a powerful executive a body which shall more or less adequately represent the classes of the people conscious of common interests. These classes are the *literati* class and the merchant class. The *literati* not only are conscious of common interests; they also still have an immense influence on public opinion. The merchants are already organized in trade guilds and have in the past exercised rather informally a great influence over the actions of the officials. To these two classes might perhaps be added the larger tax-payers.

To a body representing these classes and chosen from them so far as possible by some form of election, should for the present be given consultative rather than deliberative powers. If it prove effective its powers may be increased and its representative character widened, but it is extremely doubtful whether real progress in the direction of constitutional government in China will be made by a too violent departure from past traditions, by the attempt, in order to apply a general political theory, to establish a form of government, which, while suited to other countries, does not take into account the peculiar history of China and the social and economic conditions of the country.

A policy such as I have outlined is, I believe, the policy which the President is now trying to adopt. Yuan Shih Kai is, however, in addition to being a statesman, a politician. If he were not he would not be where he is. As a politician he has to accommodate himself to temporary political conditions as best he may. What those are the outsider does not and cannot know. No one therefore who is not acquainted with the ins and outs of Chinese political life can sit in judgment upon the particular acts of the President in the great struggle which he has been conducting with such consummate skill during the past two or three years. But we are in a position to express an opinion as to the general result. If we look back upon these years we see that Yuan Shih Kai has been able to prevent the disintegration of China, that he had almost succeeded in reorganizing its finances when the present lamentable European war broke out, and that he is bringing order out of disorder. At no time in the history of China has there been so little disorder attendant upon so important and radical a change of government. The overthrow of a dynasty in China in the past has usually been accompanied by wars which have devastated whole provinces, wiped out cities, destroyed great amounts of property and slain millions of human beings. At this particular period in the history of China comparatively few lives have been sacrificed and conditions are becoming better almost every day. That Yuan Shih Kai has therefore already done much for his country cannot be gainsaid. That he is endeavoring to lead China into the paths of constitutional government as fast as her

faltering steps will permit is my sincere conviction. Whether he will succeed no one of course can say. But his success in what he has attempted to accomplish in the past is certainly a happy augury for the future. One reason for this success is to be found in the fact that as a practical statesman he is convinced that the constitution of China must be adapted to the needs and conditions of the country.